IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 8922 of 2003

Between:

G. Ramaiah, S/o. Venganna, Hindu, aged 56 years,
r/o. E. Thandrapadu, Kurnool mandal & district.

..... PETITIONER

AND

1. The Commissioner, Proh. & Excise, Hyderabad

2. The Superintendent, Proh. & Excise, Kurnool.

3. Sri Sai Krishna Goud, wine shop owner, Panchalingala

village, Kurnool district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned proceedings of the 2nd respondent in Rc. No. B1/876/2002, dt: 25-04-2003 in rejecting the petitioner's application for allotment of IL 24 shop as illegal, arbitrary and unconstitutional and consequently direct the repsondents to allot forthwith the IL 24 shop at E. Thandrapadu in terms of the observations made in WP. No. 8506 of 2002, dt: 19-02-2003 by holding that the petitioner's proposed shop at E. Thandrapadu of Kurnool District shall not come with in 5 kms. of the peripheral area of Kurnool Mpl. Corpn.,

Counsel for the Petitioner : MR.J.U.M.V.PRASAD

Counsel for the Respondent Nos.1& 2: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.3: None

The Court made the following :

O R D E R:

Heard the learned counsel for petitioner and also the learned Government Pleader appearing on behalf of respondents 1 and 2.

2. The petitioner herein filed this writ petition, *inter alia,* seeking writ of Mandamus, declaring the impugned proceedings of the respondent No.2 in Rc.No.B1/876/2002 dated 25-4-2003, as illegal.

3. The case of the petitioner is that he has applied for a licence in Form IL-24 of A.P. Indian Liquor and Foreign Liquor Rules, 1970 for the year 2002-2003 for a shop situated at a distance of more than 8 kms. from the peripheral area of Kurnool Municipal Corporation and paid necessary fee and also complied all formalities. However, the same is said to be rejected on the ground that the said village is within 5 kms. Hence, the present writ petition.

4. The learned counsel for the petitioner submits that even in the earlier occasion the petitioner had approached this Hon'ble Court in W.P.No.8506 of 2002, which was disposed of by an order dated 19/02/2003, directing the respondents to consider the petitioner's case afresh, subject to the satisfaction as to the distance. Though the petitioner states that he has already filed a certificate issued by the Executive Engineer to show that the village is at a distance of 8 kms. and the same was not properly considered and whereas the distance was taken as 2.5 kms. in a straight line on the horizontal plane drawn from the Kurnool Municipality. During the course of arguments the learned counsel also sought to place reliance on another certificate issued in Rc.44/1/03 dated 29th September, 2003 by the Executive Engineer, R & B, Department, Kurnool, which shows that the distance between Kurnool and E.Thandrapadu is 13.60 kms. Further, he has also submitted in similar circumstances in respect of an adjoining village, which is farthest from E.Thandrapadu, for which licence has been granted.

5. On considering the submissions made and also on perusal of material available on record, it is seen that the petitioner's case is that the village E.Thandrapadu is at a distance of more than 5 kms. and in support of his claim, reliance was placed on

the certificate said to be issued by the Executive Engineer, however, subsequent certificate issued by the very same authority dated 29.09.2003 shows that the distance is 13.60 kms. Having regard to such a substantial and noticeable variance and further even the said certificate does not, in fact, reflect the distance as contemplated and also as directed by this Court in earlier round in W.P.No.8506 of 2002 dated 19.02.2003, in view of the above, the petitioner has utterly failed to make out his case to show that the proposed shop at E.Thandrapadu is at a distance of more than 5 kms. Hence, I do not find any merits in this writ petition and it is liable to be dismissed.

6 . The writ petition is accordingly dismissed, however, it shall be open to the petitioner to make a fresh application by other proper evidence to substantiate his claim, which can be appreciated and
re-considered afresh. In view of the fact that the petitioner's application for issuance of licence has already been rejected, there is absolutely no justification for withholding initial deposit amount of Rs.1 lakh made by the petitioner. Accordingly, the respondents 1 and 2 are directed to refund the same to the petitioner.

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B.PRAKASH RAO,J.

Dated 04th August, 2004

Bsb/Mrr.

To

1. The Commissioner, Proh. & Excise, Hyderabad

2. The Superintendent, Proh. & Excise, Kurnool.

3. Two CCs to the Government Pleader for Prohibition & Excise, High Court Buildings,

Hyderabad, (OUT)

4. Two CD copies.